

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

8:09CV65

Civil Action No. 08-CV-02146 WYD KLM

HARRY R. FOWLER,

Plaintiff,

vs.

WERNER ENTERPRISES, INC.,

Defendant.

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
09 FEB 20 PM 1:59
OFFICE OF THE CLERK

DEFENDANT'S PROPOSED SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

The Scheduling Conference was held on December 3, 2008. Plaintiff appeared *pro se*, 2550 C Road, Stockton, KS, 67669, (785) 994-6365. Defendant was represented by W. V. (Bernie) Siebert, Sherman & Howard L.L.C., 633 Seventeenth Street, Suite 3000, Denver, CO 80202, (303) 299-8222.

2. STATEMENT OF JURISDICTION

Plaintiff claims Title VII, 42 U.S.C. § 2000e-5 et seq. However, the charge which issues as a basis for the claim alleges a violation of the Americans with Disabilities Act ("ADA"), 42 USC § 12101 et seq.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff: Claims he was treated differently because of a chronic medical condition and that he was retaliated against for filing the ADA charge.

b. Defendant: Defendant denies that it has treated plaintiff differently than other employees, that plaintiff has a disability or that he is otherwise in a protected class. Defendant is unaware of any conduct toward plaintiff that might be construed as retaliatory.

4. UNDISPUTED FACTS

The following facts are undisputed:

- a. Plaintiff is a resident of the State of Kansas.
- b. Defendant is a Nebraska corporation with its principal place of business located in Omaha, Nebraska.
- c. Plaintiff is an employee of Defendant.
- d. Plaintiff filed a charge of disability discrimination with the Nebraska Equal Opportunity Commission on or about November 9, 2007.
- e. Plaintiff received a Notice of Right to Sue on August 21, 2008 for his charge claiming an ADA violation.

5. COMPUTATION OF DAMAGES

Plaintiff claims \$250,000,000 in damages.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

- a. Date of Rule 26(f) meeting: Attempted without success as of December 2, 2008.
- b. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1). None.
- c. Statement as to when Rule 26(a)(1) disclosures were made or will be made. On or before December 13, 2008. ~~Unable to make contact to conduct Rule 26 conference.~~

Case 1:08-cv-02146-WYD-KLM Document 11 Filed 12/03/2008 Page 3 of 7

Case 1:08-cv-02146-WYD-KLM Document 9 Filed 12/02/2008 Page 3 of 6

d. Statement concerning any agreements to conduct informal discovery, including joint interviews with potential witnesses, exchanges of documents, and joint meetings with clients to discuss settlement. If there is agreement to conduct joint interviews with potential witnesses, list the names of such witnesses and a date and time for the interview which has been agreed to by the witness, all counsel, and all *pro se* parties. None.

e. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form. In those cases, the parties must indicate what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit associated discovery costs and delay; and (iv) avoid discovery disputes relating to electronic discovery. Describe any agreements the parties have reached for asserting claims of privilege or of protection as trial-preparation materials after production of computer-generated records. No use of electronic materials is anticipated.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. CASE PLAN AND SCHEDULE

- a. Discovery Cut-off: June 1, 2009.
- b. Dispositive Motion Deadline: July 1, 2009.
- c. Expert Witness Disclosure
 - (1) State anticipated fields of expert testimony, if any. None.

Case 1:08-cv-02146-WYD-KLM Document 11 Filed 12/03/2008 Page 4 of 7

Case 1:08-cv-02146-WYD-KLM Document 9 Filed 12/02/2008 Page 4 of 6

d. Deposition Schedule:

<i>Name of Deponent</i>	<i>Date of Deposition</i>	<i>Time of Deposition</i>	<i>Expected Length of Deposition</i>
Plaintiff	TBD	TBD	7 hours

e. Interrogatory Schedule: ~~January 10, 2009~~. All written discovery must be served so that responses are due no later than the discovery deadline.

f. Schedule for Request for Production of Documents: ~~January 10, 2009~~ See (e) above.

g. Discovery Limitations:

(1) Any limits which any party wishes to propose on the number of depositions. 5. depositions per party.

(2) Any limits which any party wishes to propose on the length of depositions. 7 hours. per deposition.

(3) Modifications which any party proposes on the presumptive numbers of depositions or interrogatories contained in the federal rules. 25

(4) Limitations which any party proposed on number of requests for production of documents and/or requests for admissions. 25 rfp's and 25 rfa's

(5) Other Planning or Discovery Orders. None

9. SETTLEMENT

Unable to discuss. However, it is doubtful that any settlement discussions would be beneficial at this time.

10. OTHER SCHEDULING ISSUES

- a. A statement of those discovery or scheduling issues, if any, on which counsel, after a good-faith effort, were unable to reach an agreement. All of the above.
- b. Anticipated length of trial and whether trial is to the court or jury. 3 days.
- c. A request to conduct appropriate pretrial proceedings in the Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado. N/A.

11. OTHER MATTERS

A Motion for Change of Venue is pending.

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any notice of withdrawal, notice of substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures established by the judicial officer presiding over the trial of this case.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

12. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may be altered or amended only upon a showing of good cause.

Case 1:08-cv-02146-WYD-KLM Document 11 Filed 12/03/2008 Page 6 of 7

*08-cv-2146-WYD-KLM
Page 6 of Scheduling Order*

a. A settlement conference will be held on June 22, 2009 at 1:30 o'clock pm.

It is hereby ordered that all settlement conferences that take place before the magistrate judge shall be confidential.

() *Pro se* parties and attorneys only need be present.

(☒) *Pro se* parties, attorneys, and client representatives with authority to settle must be present. (NOTE: This requirement is not fulfilled by the presence of counsel. If an insurance company is involved, an adjuster authorized to enter into settlement must also be present.)

(☒) Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before June 15, 2009 outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

As needed.

c. A final pretrial conference will be held in this case on September 15, 2009 at 9:30 o'clock am. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five days before the final pretrial conference.

~~12. OTHER MATTERS~~

~~[The following paragraphs shall be included in the scheduling order:]~~

~~In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any notice of withdrawal, notice of substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.~~

~~Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures established by the judicial officer presiding over the trial of this case.~~

~~In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.~~

~~With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.~~

~~The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.~~

Case 1:08-cv-02146-WYD-KLM Document 11 Filed 12/03/2008 Page 7 of 7

Case 1:08-cv-02146-WYD-KLM Document 9 Filed 12/02/2008 Page 6 of 6

DATED this 3rd day of August, 2008.

BY THE COURT:

Kent L. Mc
United States Magistrate Judge

APPROVED:

Harry R. Fowler
Harry R. Fowler
2550 C Road
Stockton, KS, 67669
Telephone: (785) 994-6365

Pro Se

s/ Walter V. Siebert
Walter V. Siebert
Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000
Denver, CO 80202
Telephone: (303) 299-8222
Fax: (303) 298-0940
wsiebert@shermanhoward.com

Attorneys for Defendant Werner Enterprises, Inc.